

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan For Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
	)	
To: The Commission		

**COMMENTS OF NATIVE PUBLIC MEDIA AND THE NATIONAL CONGRESS OF  
AMERICAN INDIANS ON THE PETITION FOR RECONSIDERATION AND  
CLARIFICATION OF THE UNITED STATES TELECOM ASSOCIATION**

In its *USF/ICC Transformation Order*,<sup>1</sup> the Commission adopted rules designed to improve communications between Tribal governments and telecommunications service providers (the “Tribal engagement” rules). The United States Telecom Association (“USTA”) sought reconsideration of those rules in December 2011. Native Public Media (“NPM”)<sup>2</sup> and the National Congress of American Indians (“NCAI”)<sup>3</sup> opposed the USTA Petition in January 2012.

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<sup>1</sup> *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”) *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10<sup>th</sup> Cir. filed Dec. 18, 2011).

<sup>2</sup> Native Public Media is a non-profit organization which encourages Native people across the United

On July 19, 2012, the FCC’s Office of Native Affairs and Policy (“ONAP”) issued a Public Notice (“PN”)<sup>4</sup> that provided “further guidance” with respect to the Tribal engagement obligations. The stated goal of the PN was to help ensure “the effective exchange of information that will lead to a common understanding between Tribal governments and communications providers receiving USF support ....”<sup>5</sup> USTA’s Petition for Reconsideration and Clarification (“Petition”) maintains that the PN improperly imposed additional obligations on any eligible telecommunications carrier (“ETC”) that seeks to provide service on Tribal lands and reiterates USTA’s request for reconsideration of the Tribal engagement rules.

### **DISCUSSION**

USTA’s Petition is procedurally and substantively misguided. As a procedural matter, USTA has had, and has used, its opportunity to seek reconsideration of the *USF/ICC Transformation Order*. To the extent that the Petition seeks to re-argue USTA’s previous objections to the Tribal engagement rules, the Petition should not be considered. Section 405 of the Communications Act<sup>6</sup> clearly provides that a petition for reconsideration must be filed within thirty days of the date upon which public notice is given of the order, decision, report or action

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States to participate actively in all forms of media. NPM promotes healthy, engaged and independent Native communities through media access, control and ownership.

<sup>3</sup> The National Congress of American Indians (NCAI) is the oldest, largest, and most representative congress of American Indians and Alaska Natives in the United States. NCAI was created by tribal leaders in 1944 in response to termination and assimilation policies that threatened the existence of American Indian and Alaska Native tribes. Since then, NCAI has fought to preserve the treaty rights and sovereign status of tribal governments, while ensuring that Indian people may fully participate in the political system. As the most representative organization of American Indian and Alaska Native tribes, NCAI serves the broad interests of tribal governments across the nation.

<sup>4</sup> *Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, Public Notice, DA 12-1165, WC Docket Nos. 10-90 *et al.* (July 19, 2012) (“*Further Guidance*”). The ONAP prepared the *Further Guidance* in coordination with the Wireless Telecommunications and Wireline Competition Bureaus (collectively, “Bureaus”).

<sup>5</sup> PN, ¶ 12.

complained of. Late-filed petitions for reconsideration are routinely denied.<sup>7</sup> The PN does not provide USTA with a second right of reconsideration.<sup>8</sup>

As a comment on the substance of the PN, USTA's Petition is not only misguided, but deeply disappointing. The PN is based on the hope that the "engagement process should not be approached as an adversarial undertaking,"<sup>9</sup> and that Tribal governments and communications providers will take advantage of an historic opportunity to "foster a greater common understanding of the factors necessary to deploy and sustain services on Tribal lands."<sup>10</sup>

Contrary to the hopes of the PN, the USTA Petition approaches Tribal engagement rules as an opportunity for recalcitrant confrontation, rather than an opportunity to "move forward with a shared vision."<sup>11</sup> The Petition seeks not to improve communications between Tribes and service providers, but to undermine or curtail the very concept of "Tribal engagement." USTA regards Tribal governments not as proud representatives of sovereign nations but as "unprepared, disorganized, and unable to convey with certainty the communications needs and priorities of their individual communities."<sup>12</sup>

USTA's Petition does not bode well for the aspirations expressed in the PN. Indeed, they sadly illustrate the adversarial attitudes that the Tribal engagement rules were designed to

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<sup>6</sup> 47 U.S.C. § 405.

<sup>7</sup> See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 28 CR 1310 (2003) (the Commission lacks discretion to waive the statutory filing period for petitions for reconsideration).

<sup>8</sup> As a general rule, public notices are interlocutory in nature and are not subject to petitions for reconsideration. See *Petition for Reconsideration of Various Auction 87 Public Notices*, 55 CR 1193 (WB, 2012).

<sup>9</sup> PN, ¶ 3.

<sup>10</sup> PN, ¶ 3.

<sup>11</sup> PN, ¶ 17.

<sup>12</sup> Petition, p. 6.

overcome. In spite of the USTA Petition, NPM and NCAI hail the spirit of cooperation the PN celebrates. Native Nations are eager to engage in the “collaborative discussions”<sup>13</sup> which the PN advocates.

If reasonableness does not prevail,<sup>14</sup> and USTA members decline to exercise “good faith efforts to meaningfully engage with the Tribal government,”<sup>15</sup> they will be unable to make certifications required to receive USF support. As the PN reminds service providers, “Failure to satisfy the Tribal engagement obligation will subject ETCs to financial consequences, including potential reduction in universal service support should they fail to fulfill their engagement obligations.”<sup>16</sup> That result would be a very sad conclusion to the PN’s hopes for an “historic opportunity to improve the communications landscape on Tribal lands.”<sup>17</sup>

Respectfully submitted,

**NATIVE PUBLIC MEDIA**

By: \_\_\_\_\_/s/  
Loris Ann Taylor  
President  
P.O. Box 3955  
Flagstaff, AZ 86003

**NATIONAL CONGRESS OF  
AMERICAN INDIANS**

By: \_\_\_\_\_/s/  
Jacqueline Johnson Pata  
Executive Director  
1516 P Street, NW  
Washington, DC 20005

By: \_\_\_\_\_/s/  
John Crigler  
James E. Dunstan  
GARVEY SCHUBERT BARER  
1000 Potomac St., N.W. Suite 500  
Washington, DC 20007  
*Counsel to Native Public Media*

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<sup>13</sup> PN, ¶ 9.

<sup>14</sup> See PN, ¶ 15.

<sup>15</sup> PN, ¶ 15.

<sup>16</sup> PN, ¶ 7.

<sup>17</sup> PN, ¶ 17.